IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

SATURDAY, THE NINTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 8452 of 1999

Between:

M.Mangalam, S/o Late Kalavan,
CISF Constable No.773380024, CISF Unit, BHEL (R), Hyd.

..... PETITIONER

AND

1 Union of India, Rep by its Director General, Central Industrial Security Force, CISF Hqrs.,
New Delhi.
2 The Commandant, Central Industrial Security Force,
CISF Unit, BHEL(R), Hyd.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the proceedings No.E-27015/PF-Ex-SM/Ad.II/99-1429 dt.25-3-99 of the 2nd respondent as arbitrary, illegal, discriminatory and violative of principles of natural justice and also violative of Art.14 & 16 of the Constitution of India in so far as it relates to teh petitioner and consequently direct the respondents not to revise the petitioner's pay recover any amount from my salary

Counsel for the Petitioner:MR.T.P.ACHARYA

Counsel for the Respondent No.: MR.P.PHALGUNA RAO

The Court made the following :

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.2CCs to

2.2CD copies

*Form-NIC-OGS/WP{**TSSB**}*

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.8452 of 1999

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus to declare the Proceedings dated 25-3-1999 of the 2nd respondent as arbitrary and illegal and consequently to direct the respondents not to revise the petitioner's pay and recover any amount from his salary.

By the impugned Proceedings, the salary of the petitioner was sought to be reduced by Rs.900/- per month purported to be consequent upon revision of military pension with effect from 1-1-1996 as per the instructions issued in the Headquarters' letter No.E-27015/(3)/1/98/Estt/135, dated 25/26-1-1999.

According to the petitioner, earlier when his pay was sought to be reduced as per the Fourth Pay Revision Commission recommendations, he filed W.P.No.492 of 1995 before the High Court of Madras (since he was stationed at Madras in those days) and it was disposed of on 9-8-1995 following the Judgment of the apex Court in **UNION OF INDIA v. V.G.VASUDEVAN PILLAI & OTHERS** (1995(2) SCC 32) as a distinction was sought to be made between the persons, who are reemployed prior to 1-1-1986 and after that date, as it was discriminatory and not sustainable. However, after the Fifth Pay Commission recommendations came into effect, he was asked to submit his option for the purpose of refixation of his pay and thereafter, his salary was again sought to be revised and reduced under the impugned Proceedings.

A detailed counter affidavit has been filed stating that the petitioner opted for Fifth Pay Revision Commission benefits and as such, while refixing his pay, the impugned order was passed.

Learned counsel for the petitioner disputed as to the exercising of the option by the petitioner. Learned Additional Standing Counsel appearing for respondents produced record showing that the petitioner had opted for being governed by the Fifth Pay Commission recommendations. It is further asserted in the counter that after introduction of Fifth Pay Commission recommendations and as per CCS (Revision Pension) Rules,1997 the pay of reemployed pensioners was required to fixed with effect from 1-1-1996. In this connection, a clarification was sought from the Headquarters of the Force with regard to the manner of pay fixation of re-employed pensioners. After consultation with the Ministry of Home Affairs, which issued clarification that enhanced pension with effect from 1-1-1996 has to be adjusted in cases where the entire pension has not been ignored with effect from 25-1-1993 in terms of Ministry of Defence O.M.No. dated 31-1-1993. In other words, the revised pension was to be adjusted in the cases of CISF personnel re-employed by 22-1-1993 and a subsequent calculation of the pay fixation showing the manner of adjustment and enhanced pension had also been circulated. Accordingly, the pay of the petitioner was fixed at Rs.3,500/- less Rs.900/- being enhanced pension with effect from 1-1-1996.

In view of the above, I am of the opinion that the petitioner having opted for Fifth Pay Commission recommendations, he is governed by the clarification issued in pursuant thereto by the Ministry of Home Affairs. Therefore, the fixation per se cannot be said to be arbitrary or illegal. However, at this stage, learned counsel for the petitioner placed before this Court the Central Civil service (Revised Pension) Rules,1977 and drawn attention to Note-5 of Rule 7, which reads as under:

and submitted that even according to those rules, there was no necessity of reducing the pay of the petitioner even if the Fifth Pay Commission recommendations are applied and the petitioner made his option for the same. This Court cannot go into such factual aspects in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India. However, it is left open to the petitioner to approach the authorities and make an appropriate representation as per the Central Civil Service (Revised Pension) Rules,1977 and the authorities are at liberty to consider the same and pass appropriate orders as per law.

Accordingly, the writ petition is disposed of. No order as to costs.

10-9-2004

prk